



National Credit Union Administration

BOARD ACTION MEMORANDUM

TO: NCUA Board

DATE: September 22, 2009

FROM: Office of General Counsel

SUBJ: Amended and Restated
Temporary Corporate Credit
Union Liquidity Guarantee
Program (TCCULGP)
Agreement

DATE ACTION REQUESTED: September 24, 2009.

ACTION REQUESTED: Board approval of Amended and Restated TCCULGP Agreement which may be used as an alternative agreement for corporate credit unions (CCUs) whose counterparties in transactions guaranteed under the TCCULGP require clarification that NCUA is the guarantor and specification of the timely payment period. This action will not impact the continued use of the existing TCCULG Agreement where there is no need for the clarification.

OTHER OFFICES CONSULTED: Office of Corporate Credit Unions and Office of Capital Markets and Planning.

VIEWS OF OTHER OFFICES CONSULTED: Concur.

SUBMITTED TO THE INSPECTOR GENERAL FOR REVIEW: Yes.

BUDGET IMPACT, IF ANY: None.

RESPONSIBLE STAFF MEMBERS: Trial Attorney Dianne Salva, Office of General Counsel and Scott Hunt, OCCU.

SUMMARY: NCUA staff is recommending the Board authorize the Executive Director to execute an alternative TCCULGP agreement with CCUs issuing unsecured debt guaranteed under the TCCULGP to counterparties who require an agreement that explicitly states that NCUA is the guarantor under the program and specifies the time period for payment. The current agreement, approved by the NCUA Board at its July 16 meeting, has been widely accepted by counterparties with whom CCUs have engaged in guaranteed transactions to date. Most recently, however, as some CCUs are considering issuing unsecured debt to capital markets, some counterparties and ratings agencies have indicated that they require an agreement that more explicitly states that NCUA is the guarantor under the TCCULGP. They have also indicated that, although

the current agreement states that timely payment will be made under the agreement, they require an explicit statement of when payment will be made upon presentation of a valid claim.

The changes proposed in the attached Amended and Restated TCCULGP Agreement substitute NCUA as the named guarantor where previously the agreement referred to variously the NCUA Board, the Temporary Corporate Credit Union Stabilization Fund or the National Credit Union Share Insurance Fund. As amended it also commits NCUA to payment on a valid claim within 5 business days.

These recommended changes are not substantive and will clarify and reinforce the NCUA guarantee underlying the TCCULGP program and further enhance a CCUs access to low cost borrowing as a way to maintain stable liquidity. They will also assure that any issuance of debt guaranteed under the program will receive the highest possible rating thereby reducing the cost to the corporate credit union involved. Adoption of this Amended and Restated TCCULGP Agreement will not impact the continued use of the existing TCCULG Agreement where there is no need for the clarification.

RECOMMENDED ACTION: Staff recommends that the Board: 1) approve the Amended and Restated TCCULGP agreement as outlined in this memorandum, drafts of which are attached in redline and final versions; (2) delegate to the Executive Director the authority to execute the attached Amended and Restated TCCULGP agreement with any CCU requiring it and to make minor changes to the agreement as deemed necessary; and (3) place a sample Amended and Restated TCCULGP Agreement on the Corporate Stabilization page of the NCUA Website.

Attachments

AMENDED AND RESTATED AGREEMENT BETWEEN
THE NATIONAL CREDIT UNION ADMINISTRATION BOARD
AND
U. S. CENTRAL FEDERAL CREDIT UNION

REGARDING THE TEMPORARY GUARANTEE OF CERTAIN UNSECURED DEBT OBLIGATIONS

THIS AMENDED AND RESTATED AGREEMENT (the "Agreement") is made and entered into on July 28, effective as of September 9, 2009, by U.S. Central Federal Credit Union (hereinafter "CORPORATE"), a credit union organized under the laws of the United States of America doing business at 9701 Renner Boulevard, Suite 180, Lenexa, KS and the National Credit Union Administration Board (hereinafter "BOARD"), as the managing body of the National Credit Union Administration (hereinafter "NCUA") and the "NCUA"), the Temporary Corporate Credit Union Stabilization Fund (hereinafter "TCCUSF") and the National Credit Union Share Insurance Fund ("NCUSIF"), pursuant to the Federal Credit Union Act, 12 U.S.C. 1751, et. Seq. (the "Act").

Whereas, the National Credit Union Administration Board (the "BOARD") is the managing body of the NCUA and the Act authorizes the BOARD to take actions consistent with the purpose of insuring member accounts under Title II of the Act, and

~~Whereas,~~ Whereas, the Act authorizes the Board to exercise incidental powers BOARD to perform such acts as it may deem necessary or appropriate to carry out the powers specifically granted by provisions of the Act, and

~~Whereas,~~ Whereas, the BOARD has determined it is in the best interest of the credit union system to provide a temporary guarantee for the qualifying senior unsecured debt obligations of CORPORATE, known as the pursuant to its Temporary Corporate Credit Union Liquidity Guarantee Program (hereinafter "TCCULGP"), to enable CORPORATE to access sources for funding liquidity needs and other purposes contemplated by the Act, and

Whereas, the legal authority for the TCCULGP is located in the Act at, including 12 U.S.C. 1766(a), 1766(i)(2), 1783(a), 1788(a)(1), 1790e AND and 1789(A)(1) and (7), and

Whereas, ~~the TCCUSF is administered by the NCUA,~~ is an independent agency in the executive branch of the United States Government States government, and so the TCCUSF NCUA's TCCULGP guarantees represent obligations of the United States government and are backed by its full faith and credit as indicated by the U.S. Department of Justice in Debt Obligations of the National Credit Union Administration, 6 U.S. Op. Off. Legal Counsel 262 (1982),

NOW, THEREAFTER, in consideration of the BOARD NCUA's agreement to guarantee qualifying senior unsecured debt obligations issued by CORPORATE, as detailed below, the NCUA, CORPORATE and the BOARD, acting on behalf of the NCUA, the TCCUSF and the NCUSIF, agree as follows:

1. *Guarantee.* The BOARD, through the TCCUSF, NCUA will and does hereby guarantee 100% of CORPORATE's qualifying senior unsecured debt obligations that are designated as guaranteed in accordance with this Agreement, and issued from October 16, 2008 through June 30, 2010 and maturing on or before June 30, 2017-2017 (hereinafter, the "NCUA Guarantee"). The amount of senior unsecured debt obligations guaranteed under this Agreement shall not exceed \$10,000,000,000. (NOTE: This 10,000,000,000, which amount may be increased with the prior written approval of the NCUA.)

2. *Qualifying obligations.* The term "qualifying senior unsecured debt obligations" includes the following: federal funds purchased, promissory notes, commercial paper, and unsubordinated unsecured notes, issued from October 16, 2008 through June 30, 2010 and maturing on or before June 30, 2017. The a qualifying senior unsecured debt obligation must be noncontingent. It must be evidenced by a written agreement, contain a specified and fixed principal amount to be paid on a date certain, and not be subordinated by its terms to another liability. No document governing the issuance of the a qualifying senior unsecured debt obligation that is intended to be subject to and covered by the TCCUSF-guaranteed NCUA Guarantee hereunder shall contain any provision that would result in the automatic acceleration of the debt upon a default by CORPORATE at any time during which the TCCUSF-guaranteed NCUA Guarantee is in effect or and during which payments are being made by the TCCUSF NCUA pursuant to the TCCULGP and this Agreement. The term "senior unsecured debt" DOES NOT INCLUDE:

- (a) Share accounts. Shares are insured by the National Credit Union Share Insurance Fund ("NCUSIF") NCUSIF under 12 C.F.R. Part 745.
- (b) Capital accounts, including Member Capital and Paid-in Capital.
- (c) Derivatives.
- (d) Obligations from guarantees or other contingent liabilities.

3. *Use of funds obtained under guarantee.* Subject to paragraph 7(b) subsection 7(c) and subsection 10(a), CORPORATE will NOT identify debt as guaranteed by the TCCUSF under TCCULGP if:

- (a) The BOARD has terminated the participation of CORPORATE by formal written notification and posted such notification on NCUA's website;
- (b) CORPORATE has exceeded its authorized limit for issued guaranteed debt as specified in paragraph 1, above;
- (c) The debt is extended to a CORPORATE uses the proceeds to extend credit to a CORPORATE affiliate, an insider of CORPORATE, or an insider of an affiliate without prior NCUA approval of the guarantee;
- (d) CORPORATE uses the proceeds of the obligation guaranteed debt to prepay another, existing debt that is not TCCULGP-guaranteed under TCCULGP; or
- (e) The debt does not otherwise meet the requirements of this Agreement.

4. *Determination of guarantee and notice to creditor.* CORPORATE will determine, at time of debt issuance, which of its qualifying senior unsecured debt obligations are ~~covered/guaranteed~~ by the ~~TCCUSF~~ NCUA Guarantee and which are not ~~covered/guaranteed~~ by the ~~TCCUSF~~ NCUA Guarantee. When CORPORATE determines that a particular obligation will be covered/guaranteed by the ~~guarantee~~ NCUA Guarantee, it must notify ~~the each~~ each creditor or purchaser of such debt, contemporaneous with the issuance of the ~~obligations~~ such debt, that the credit union intends the obligation to be guaranteed by the ~~TCCUSF~~ NCUA. The ~~TCCUSF~~ NCUA will not honor a guarantee claim without proof **recorded at or before the time of debt issuance** of CORPORATE's intent to ~~guarantee~~ have that particular obligation covered by the NCUA Guarantee (without limiting the types of recordings that may serve as proof of intent, the parties acknowledge that a written confirmation provided by CORPORATE to the creditor or purchaser of such debt expressly stating its intention that such debt be covered by the NCUA Guarantee will be sufficient recording for this purpose). CORPORATE is also encouraged to provide a copy of this Agreement to each creditor or purchaser of its participating creditors debt or its authorized Representative (as defined below). The parties agree that when CORPORATE determines a particular qualifying senior unsecured debt obligation will be covered by the ~~guarantee~~ NCUA Guarantee, the holders of that particular debt obligation are intended to be third party beneficiaries of this Agreement.

5. *Nature of guarantee and procedure for claims determination.*

(a) *Cancellation of guarantee.* Once a qualifying senior unsecured debt obligation has been guaranteed by the ~~TCCUSF~~ NCUA under the terms of this Agreement, the guarantee will continue until the debt has been fully repaid. No party, including the ~~TCCUSF~~ NCUA, the BOARD (or any person appointed by the BOARD), the ~~TCCUSF~~, the ~~NCUSIF~~, the CORPORATE, or a creditor holding ~~the such~~ such debt, may cancel the ~~guarantee~~ NCUA Guarantee without the prior written approval of ~~the each other involved parties~~ such party.

(b) *Payments by the ~~TCCUSF~~ NCUA on guaranteed debt.*

(i) *In general.* The ~~TCCUSF's~~ obligation to pay holders of TCCUSF-guaranteed debt issued by CORPORATE will arise upon the uncured failure of CORPORATE to make a timely NCUA will provide payment of guaranteed amounts (i) in the case of any payment of principal or interest as required under the debt instrument (a "payment default") then due and as to which there is a cure or grace period for such payment, but which CORPORATE has not paid by the end of such cure or grace period, on the Business Day on which any such cure or grace period with respect thereto expires, and (ii) in the case of any payment of principal or interest then due as to which there is no cure or grace period for such payment, but which CORPORATE has not paid on such due date, within five (5) Business Days after such due date (with events referred to in clause (i) or (ii) being hereafter referred to as an "Uncured Event of Default"). If a demand for payment is not made within the time period contemplated in the immediately preceding sentence, but is otherwise timely made, the NCUA will provide payment with respect to such Uncured Event of

Default within five (5) Business Days after receipt of such demand. The term "Business Day" means a day other than a Saturday, a Sunday or any other day on which banking institutions in New York, New York are authorized or required by law or executive order to remain closed. Liabilities arising from the TCCULGP NCUA Guarantee will be paid first from the fees assessed to all participating corporate CU credit unions to participate in the program. To the extent any liability from the TCCULGP NCUA Guarantee exceeds funds available from the assessed fees it will be paid first from the fees assessed on all corporate credit unions for participation in the TCCULGP that are lawfully available to make payments hereunder, it will then be paid from funds available from the TCCUSF that are lawfully available to make payments hereunder and then, if necessary, from the NCUSIF funds of the NCUSIF that are lawfully available to make payments hereunder. The NCUA Guarantee is a general obligation of the NCUA, which is backed by the full faith and credit of the United States government and which full faith and credit would be available to satisfy any liabilities remaining under the NCUA Guarantee that are not satisfied from the sources of funds referenced in the immediately preceding sentence.

- (ii) *Method of payment.* Upon the occurrence of a payment default an Uncured Event of Default, the TCCUSF NCUA will satisfy its guarantee obligation by making the payment that triggered the Uncured Payment Default as well as all future scheduled payments of principal and interest pursuant to the terms of the debt instrument through maturity (without regard to default or penalty provisions). CORPORATE understands and acknowledges that any such payments by the TCCUSF NCUA with respect to a particular issue of senior unsecured debt obligations shall be paid by the TCCUSF NCUA directly to the debt holder or its authorized Representative. In no event shall the TCCUSF NCUA make any such guarantee payment to CORPORATE directly. As used in this Agreement, the term "Representative" means the trustee, administrative agent, fiscal agent, paying agent or other fiduciary entity or agent designated or otherwise identified as the "Representative" under the governing documents of any qualifying senior unsecured debt obligation of CORPORATE that is subject to the TCCUSF guarantee NCUA Guarantee issued under the TCCULGP and pursuant to the terms of this Agreement for purposes of submitting claims or taking other actions under the TCCULGP.

- (iii) *Demand for payment; proof of claim.* Individual debt holders, or their authorized Representatives, may make demand for payment of the guaranteed amount upon the TCCUSF NCUA. To be considered for payment, such demand must be accompanied by a proof of claim, which must include evidence in form and content satisfactory to the TCCUSF NCUA of: the occurrence of a payment default in the timely (without giving effect to any cure period) payment of principal of or

interest on a qualifying unsecured debt obligation (a "Payment Default") and the claimant's ownership of the TCCUSFNCUA guaranteed debt obligation. A form TCCULGP Demand and Proof of Claim acceptable to the TCCUSFNCUA is attached hereto as Exhibit A. The demand must also be accompanied by an assignment to the TCCUSFNCUA, in form and content satisfactory to the TCCUSFNCUA, of the debt-holderdebtholder's rights, title, and interest in the TCCUSFNCUA-guaranteed debt and the transfer to the TCCUSFNCUA of the debt-holderdebtholder's claim in any insolvency proceeding of CORPORATE. A form of TCCULGP Assignment acceptable to the TCCUSFNCUA is attached hereto as Exhibit B. This assignment must include the right of the TCCUSFNCUA to receive any and all distributions on the debt from the proceeds of CORPORATE's liquidation estate. If the demand is submitted by an authorized Representative of all debt holdersdebtholders of a specific senior unsecured debt issuance that have appointed the Representative as such, the proof of claim also must include evidence in form and content satisfactory to the TCCUSFNCUA of: the Representative's financial and organizational capacity to act as Representative; the Representative's exclusive authority to act on behalf of each and every debt-holderdebtholder appointing such Representative as such, when acting as such, as established by the terms of the specific debt instrumentapplicable governing document; and the authority to make the required assignment of each such debt-holderdebtholder's right, title, and interest in the TCCUSFNCUA-guaranteed debt to the TCCUSFNCUA and to effect the transfer to the TCCUSFNCUA of each such debt-holderdebtholder's claim in any insolvency proceeding of CORPORATE (it being acknowledged that the certifications set forth in the form TCCULGP Demand and Proof of Claim attached hereto as Exhibit A are acceptable evidence in form and content to the NCUA for this purpose). If any holder of the TCCUSFNCUA-guaranteed debt has received any distribution on that TCCUSFNCUA-guaranteed debt from the estate prior to the TCCUSFNCUA's payment under the guaranteeNCUA Guarantee, the guaranteed amount paidpayable by the TCCUSFNCUA will be reduced by the amount the holder has received in the distribution. All such demands- for payment hereunder must be made within 90 days of the occurrence of the payment defaultPayment Default upon which the demand is based. Upon receipt of a conforming proof of claim in the form described above, if timely filed, the TCCUSF will make payments of the amount guaranteed, when dueNCUA will make payments of: (i) all amounts due with respect to the Uncured Event of Default, in accordance with the time schedule set forth in subsection 5(b)(i) above, and (ii) all payments of principal of and interest on the qualifying senior unsecured debt obligations that are due after such Uncured Event of Default, in accordance with the terms of such obligations.

- (A) Any demand under this subsection must be made in writing and directed to the Executive Director, National Credit Union

Administration, Alexandria, Virginia. The demand must include a written Proof of Claim, Assignment and all supporting evidence acceptable to the TCCUSF, as set forth in the previous subsections and must certify to the accuracy of the claim.

- (B) Failure of the holder of the TCCUSFNCUA-guaranteed debt, or such holder's authorized Representative, to make demand for payment within ninety (90) days of the occurrence of payment default. Payment Default will deprive the holder of the TCCUSFNCUA-guaranteed debt of all further rights and remedies with respect to the guarantee claim its claim under the NCUA Guarantee with respect to such debt of CORPORATE.
- (c) *Subrogation.* Upon any TCCUSFNCUA payment made under this section 5, the TCCUSFNCUA will be subrogated to the rights of any debt holder debtholder against the CORPORATE, including in respect of any insolvency proceeding of CORPORATE, to the extent of the payments made by the NCUA pursuant to the NCUA Guarantee. As a government entity, the TCCUSFNCUA will be entitled to the payout priority established in 12 C.F.R. §709.5(b)(4).
- (d) *Release and satisfaction.* Payment by the TCCUSF under section 5 Timely payment by the NCUA to a debtholder or such debtholder's Representative under subsection 5(b)(ii) above will constitute, to the extent of payments made, satisfaction of all TCCUSFNCUA obligations under the TCCULGP with respect to those payments to that debt holder or holders such debtholder or such debtholder's Representative. Acceptance of any such timely payments will constitute a release of any liability of the TCCUSFNCUA under the TCCULGP with respect to those payments. CORPORATE agrees and acknowledges that it will be indebted to the TCCUSFNCUA for any payments made under these provisions (including amounts paid to another party in return for its assumption of a guaranteed debt issuance) and CORPORATE will honor immediately a demand by the TCCUSFNCUA for reimbursement therefore. Beginning on the date of such demand for reimbursement, CORPORATE shall pay interest to the TCCUSFNCUA on any unpaid principal of or interest on such indebtedness, at an interest rate equal to 1% above the non-default interest rate payable on the qualifying senior unsecured debt obligation with respect to which the guarantee payments were made, as calculated in accordance with the documents governing the such obligation. CORPORATE shall reimburse NCUA for all reasonable, out-of-pocket expenses, disbursements and advances incurred or made by it, including costs of collection or other enforcement of CORPORATE's obligations hereunder. Such expenses include the reasonable compensation and expenses, disbursements and advances of NCUA's agents, counsel, accountants and experts. Beginning on the date of any payment on the guarantee, CORPORATE hereby waives any defenses it might otherwise have to its payment obligations under the senior unsecured debt obligation, continuing until CORPORATE has fully reimbursed NCUA and the TCCUSF for any and all amounts due.

- (e) *Final determination; review of final determination.* ~~The TCCUSF's determination under this paragraph~~Any determination made by the NCUA under Section 5(b)(iii) as to the sufficiency of a demand for payment, proof of claim or assignment agreement will be a final administrative determination subject only to judicial review. The holder of TCCUSFNCUA-guaranteed debt (or such debtholder's Representative) will have the right to seek judicial review of the TCCUSFNCUA's final determination in the district court of the United States where CORPORATE's principal place of business is located or in the United States District Court for the Eastern District of Virginia. Failure of the holder of the TCCUSFNCUA-guaranteed debt to either seek such judicial review within sixty (60) days of the date of the rendering of the final determination or to cure the relevant deficiency by submitting a revised demand for payment, proof of claim or assignment agreement, as applicable, that complies with the requirements of Section 5(b)(iii) within the time period specified therein will deprive the holder of the TCCUSFNCUA-guaranteed debt of all further rights and remedies with respect to the guarantee claim.~~its claim under the NCUA Guarantee with respect to such debt of CORPORATE.~~

6. *Participation.* ~~CORPORATE's election to participate in the TCCULGP applies until June 30, 2017.~~ CORPORATE will pay the guarantee assessment as specified in paragraph 7, below, for every debt obligation guaranteed under the TCCULGP. CORPORATE's election to participate covers qualifying unsecured debt obligations issued from October 16, 2008 up to and including June 30, 2010 if:

- (a) The debt matures on or before June 30, 2017; and
- (b) The CORPORATE identifies the debt as covered by the guaranteeNCUA Guarantee.

7. *Assessments.*

- (a) *Assessment calculation and remittance.* Beginning on October 16, 2008, CORPORATE will pay the TCCUSFNCUA an assessment on the outstanding principal of each guaranteed obligation. CORPORATE will provide a listing of ~~guaranteed transactions~~debt issued by CORPORATE during the preceding month to the TCCUSFNCUA by the third business day of each month for the prior month's transactions. The TCCUSFNCUA will provide an invoice to CORPORATE by the tenth business day of each month. For months ending before July 1, 2009, the assessment fee will be calculated by multiplying the dollar amount of the guaranteed-unsecured debt obligation by 75 basis points, multiplied by the number of days the issuance is outstanding in the givenapplicable month, and divided by 365. For months ending after July 1, 2009, the fee will be calculated by multiplying the dollar amount of the guaranteed-unsecured debt obligation by the number of basis points specified in paragraph 7(b) below, multiplied by the number of days the issuance is outstanding in the givenapplicable month, and divided by 365. CORPORATE

will wire fees to the TCCUSFNCUA by the fifteenth business day of the month, pursuant to invoice instructions.

(b) *Assessment of fees after July 1, 2009.* The fees assessed by the TCCUSFNCUA after July 1, 2009 vary based on the original maturity of the debt, as follows:

- a. Maturity from 0 days to 2 years, 10 bps, per annum;
- b. Maturity over 2 years to 3 years, 15 bps per annum;
- c. Maturity over 3 years to 4 years, 20 bps per annum;
- d. Maturity over 4 years to 5 years, 25 bps per annum;
- e. Maturity over 5 years to 6 years, 30 bps per annum;
- f. Maturity over 6 years; 35 bps per annum.

(c) *Increased assessment for debt exceeding the guarantee limit or misusing debt proceeds.* If CORPORATE issues qualifying debt represented as being guaranteed by the TCCUSFNCUA that exceeds CORPORATE's authorized guaranteed amount ~~debt limit as set forth in paragraph 1, above,~~ or CORPORATE uses the proceeds of any guaranteed debt to prepay ~~another~~ existing debt obligation that is not ~~TCCULGP~~ guaranteed, the TCCUSF will ~~honor the guarantee, PROVIDED, HOWEVER, NCUA guaranteed, or the debt does not otherwise meet the requirements of this Agreement.~~ the NCUA will perform its obligations under the guarantee, provided, however, that upon the occurrence of either event CORPORATE's assessment rate for all outstanding guaranteed debt will increase to twice the rate set forth in subparagraph (b) above for purposes of the calculation in subparagraph (a) above and, in addition, CORPORATE may be subject to enforcement action by the BOARD, including civil money penalties under the Act.

8. *Reporting to the TCCUSFNCUA.*

- (a) CORPORATE will provide a spreadsheet to the TCCUSFNCUA by the third business day of each month listing all guarantees in effect at any time during the prior month. The spreadsheet will disclose the name of the creditor, the type of transaction, the dollar amount of the transaction, the ~~starting date of the transaction~~ debt was issued, and the maturity date of the ~~transaction~~ debt. Additionally, CORPORATE will copy the TCCUSFNCUA on all written confirmations provided to creditors indicating that a specific transaction is guaranteed under the TCCULGP. Transactions that are confirmed via telephone must also be followed up with a written confirmation on which the TCCUSFNCUA is copied. All reporting documentation to the TCCUSFNCUA will be submitted to the Office of Corporate Credit Unions via electronic submission to OCCUmail@ncua.gov. All documents related to the TCCULGP must be made available to CORPORATE's examiner upon request.

- (b) CORPORATE covenants and agrees that it shall notify the ~~TCCUSF~~NCUA within one business day ~~after~~ any default by CORPORATE in the payment of any principal or interest when due, without giving effect to any cure period, with respect to any indebtedness of CORPORATE (including debt that is not subject to the ~~TCCUSF guarantee~~NCUA Guarantee under the TCCULGP), whether such debt is existing as of the date of this Agreement or is issued subsequent to the date hereof, if such default would result, or would reasonably be expected to result, in an event of default under any qualifying senior unsecured debt obligation of CORPORATE that is subject to and covered by the ~~TCCUSF guarantee~~NCUA Guarantee under the TCCULGP and this Agreement.

9. *Breaches; False or Misleading Statements.* CORPORATE acknowledges and agrees that (a) if it is in breach of any provision of this Agreement, or (b) if it makes any false or misleading statement or representation in connection with the CORPORATE's participation in the TCCULGP, or makes any statement or representation in bad faith with the intent to influence the actions of the ~~TCCUSF~~, the ~~TCCUSF~~NCUA (each of the foregoing, a "Corporate Breach"), the NCUA may terminate CORPORATE's participation in the TCCULGP pursuant to Section 10 (a). Any such termination of CORPORATE's participation in the TCCULGP would solely have prospective effect, and neither such termination nor the occurrence of any Corporate Breach would in any event affect the ~~TCCUSF guarantee~~NCUA Guarantee with respect to the qualifying senior unsecured debt obligations of CORPORATE that are issued and outstanding prior to the termination of CORPORATE's participation in the TCCULGP or the occurrence of such Corporate Breach, as applicable.

10. *Termination.*

- (a) BOARD may terminate CORPORATE's participation in the TCCULGP at any time and at BOARD's discretion. Termination will be by written notice issued to the CORPORATE and published on NCUA's website. Termination of CORPORATE's participation in the TCCULGP will solely have prospective effect. The ~~TCCUSF guarantee~~NCUA Guarantee will continue, until the debt is fully repaid, on any of CORPORATE's debt issued guaranteed by the ~~TCCUSF~~NCUA before the ~~TCCUSF~~NCUA publishes the notice of termination on NCUA's website.

- (b) CORPORATE may not terminate its participation in the TCCULGP.

11. *Effect on earlier agreement.* ~~To the extent this Agreement may conflict with the earlier TCCULGP agreements signed by CORPORATE and BOARD, the Agreement signed on this date~~This Agreement controls and is intended to modify, amend and supplement the~~supersede and replace in all respects the earlier TCCULGP Agreement dated June 30, 2009-2009 signed by CORPORATE and BOARD. Guarantees by NCUA of debt of CORPORATE previously issued shall continue in full force and effect.~~

12. *Amendment and Modification.* This Agreement may be amended, modified and supplemented only by a written instrument signed by the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Agreement; provided, that no

such amendment, modification or supplement shall be valid to the extent it adversely affects the rights or interests of any third party beneficiary hereof unless such third party beneficiary has granted its prior written consent thereto

13. *Venue.* Each of the parties hereto irrevocably and unconditionally agrees that any legal action arising under or in connection with this Agreement is to be instituted in the United States District Court for the Eastern District of Virginia or in any United States District Court in the jurisdiction where CORPORATE maintains its principal place of business.

14. *Severability.* Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court or authority making such determination shall have the power to reduce the scope, duration or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

15. *Governing law.* Federal law of the United States shall control this Agreement. To the extent that federal law does not supply a rule of decision, this Agreement shall be governed by, construed and enforced in accordance with the laws of the state of Virginia.

16. *Assignment.* Neither this Agreement nor any rights, interests or obligations hereunder shall be assigned by CORPORATE whether by operation of law or otherwise, without the prior written consent of NCUA, and any purported assignment without such consent shall be void. Subject to the preceding sentence, this agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Agreed:

NATIONAL CREDIT UNION ADMINISTRATION BOARD

BY:

TITLE:

Executive Director

Pursuant to delegated authority

Date: _____

Acknowledged and agreed to by:

NATIONAL CREDIT UNION ADMINISTRATION BOARD

on behalf of the BOARD, the NCUA, the TCCUSF and the NCUSIF

BY: _____

Date: _____

TITLE: Executive Director

Pursuant to delegated authority

Agreed:

U. S. CENTRAL FEDERAL CREDIT UNION

BY: _____

Date: _____

James L. Nance

TITLE: President & CEO

BY: _____

Date: _____

TITLE: Sub-Agent for Conservator

EXHIBIT A

**Form of
TCCULGP DEMAND AND PROOF OF CLAIM**

_____[Date]

Executive Director
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Attention: _____

The undersigned is the holder ("Holder") or a duly authorized representative ("Representative") of a holder or holders of Temporary Corporate Credit Union Stabilization Fund ("TCCUSF") guaranteed debt outstanding qualifying senior unsecured debt obligations under the _____ [insert title of governing document (hereinafter referred to as the "Governing Document") and CUSIP Number, if any] dated _____ [insert month, day and year] by and between U.S. Central Federal Credit Union ("U.S. Central"), as the Issuer, and the undersigned or the undersigned's agent (as amended from time to time, the "Agreement"), pursuant to which the TCCUSF guaranteed qualifying senior unsecured debt obligations were issued by U.S. Central, and are now outstanding the debt obligations issued under the Agreement are guaranteed by the National Credit Union Administration ("NCUA") under the Temporary Corporate Credit Union Liquidity Guarantee Program ("TCCULGP"). The undersigned Holder, or Representative on behalf of all holders that have elected to be represented by the Representative, hereby demands payment of the following amounts that were due and payable to such holders on [insert month, day and year] and that are now in default, such default not having (without giving effect to any cure period) and have not been cured paid by U.S. Central as of the date hereof (such failure to pay, a "Payment Default"):

Principal: _____

Interest: _____

~~together~~ Together with payment, when due, of such other amounts as shall be required to satisfy the TCCUSF's guarantee obligations under the Temporary Corporate Credit Union Liquidity Guarantee Program ("TCCULGP") all other principal and interest payments payable by ~~CORPORATE~~ pursuant to the Agreement.

Payment of the foregoing amounts should be made to the undersigned by wire transfer to the following account:

Financial Institution Name: _____

ABA Routing Number: _____

Account Number: _____

Special Instructions: _____

The undersigned hereby makes the following certifications, which certifications are true and correct as of the date hereof:

1. The undersigned is either:

☐ the Holder; or

☐ the authorized Representative of all debtholders under the Agreement that have appointed the Representative as such.

2. If the undersigned is the Holder, the undersigned further certifies that:

(a) it hereby does make an assignment of each right, title and interest in the TCCUSFNCUA-guaranteed debt to the TCCUSFNCUA and to effect the transfer to the TCCUSFNCUA of all of Holder's claims in any insolvency proceeding of U.S. Central (pursuant to and subject to the terms of the assignment agreement included herewith). Included herewith is the executed and completed form of assignment of the Holder's interest in the TCCUSFNCUA-guaranteed debt and includes the right of the TCCUSFNCUA to receive any and all such distributions on the debt from the proceeds of U.S. Central's liquidation estate (except as expressly provided therein); and

(b) The undersigned hereby certifies that this demand is being made within 90 days of the occurrence of the payment default Payment Default upon which the demand is made based. The failure of the Holder to make demand for payment will deprive the Holder of all further rights and remedies with respect to guarantee claims relating to such Payment Default.

3. If the undersigned is the authorized Representative of all debtholders debt-holders under the Agreement that have appointed the Representative as such, the undersigned further certifies that:

(a) it has the financial capacity to act as Representative since the undersigned has sufficient capital and surplus to act as Representative under the eligibility provisions of the Agreement (Section ____), as evidenced by a current report of condition of the undersigned Representative. Such report of condition may take the form of a report of examination and is attached as Exhibit _____. If the governing documents do not contain a financial eligibility requirement, the undersigned or an affiliate thereof must be "well capitalized," as that term is defined in 12 U.S.C. §1831o(b)(1) if the Representative is a bank, or 12 U.S.C. §1790d or applicable NCUA regulations if the Representative is a credit union;

(b) init has the organizational capacity to act as Representative since the undersigned is a [i.e. New York banking corporation] with authority to commence business and to exercise corporate trust powers, as evidenced

by the Organization Certificate of the undersigned, a copy of which is attached as Exhibit __;

- (c) it has the exclusive authority to act on behalf of each and every ~~debtholder~~debt-holder under the Agreement that has appointed it as the authorized representative and has a fiduciary responsibility to ~~each such debtholder~~act on behalf of each such debt-holder to the extent contemplated by the Governing Document and applicable law. The undersigned is expressly designated as the duly authorized representative of such holders for purposes of making claims and taking other permitted or required actions under the TCCULGP, as evidenced in Section __ of the Agreement on page __. The Agreement is attached hereto in its entirety as Exhibit __.
- (d) it is expressly authorized to, and hereby does, make an assignment of each right, title and interest in the TCCUSFNCUA-guaranteed debt to the TCCUSFNCUA and to effect the transfer to the TCCUSFNCUA of each holder's claims in any insolvency proceeding of U.S. Central (pursuant to and subject to the terms of the assignment agreement included herewith). Evidence of such authorization is provided in Section ____ of the Agreement on page _____. The Agreement is attached hereto in its entirety as Exhibit __. Also included herewith is the executed and completed form of assignment of each holder's interest in the TCCUSFNCUA-guaranteed debt and includes the right of the TCCUSFNCUA to receive any and all such distributions on the debt from the proceeds of U.S. Central's liquidation estate (except as provided therein).
- (e) this demand is being made within 90 days of the occurrence of the ~~payment default~~Payment Default upon which the demand is ~~made~~based. The failure of the authorized Representative to make demand for payment within such 90 day period will deprive the ~~debtholder or debtholders~~debt-holder or debt-holders of all further rights and remedies with respect to guarantee claims relating to such Payment Default.

HOLDER

By: _____

Printed Name: _____

Title: _____

(Tax Identification No.)

(Mailing Address)

(Telephone Number)

(Fax Number)

OR

REPRESENTATIVE

By: _____

Printed Name: _____

Title: _____

(Tax Identification No.)

(Mailing Address)

(Telephone Number)

(Fax Number)

DRAFT

EXHIBIT B

Form of TCCULGP ASSIGNMENT

The undersigned is the holder ("Holder") or a duly authorized representative ("Representative") of a holder or holders of Temporary Corporate Credit Union Stabilization Fund ("TCCUSF") guaranteed debt outstanding qualifying senior unsecured debt obligations under the [insert title of governing document and CUSIP Number, if any] dated [insert month, day and year] by and between U.S. Central Federal Credit Union ("U.S. Central" or "Issuer"), as the Issuer, and the undersigned or the undersigned's agent (as amended from time to time, the "Agreement"), pursuant to which the ~~TCCUSF~~ guaranteed such qualifying senior unsecured debt obligations were issued by U.S. Central, and are now outstanding the debt obligations issued under the Agreement are guaranteed by the National Credit Union Administration ("NCUA") under the Temporary Credit Union Liquidity Guarantee Program ("TCCULGP"). The undersigned Holder, or Representative representative on behalf of all holders that have elected to be represented by the representative (the "Authorized Representative"), has demanded payment of amounts now due and payable, and that are now in default, such default not having to such holder(s) (without giving effect to any cure period), which have not been cured paid by U.S. Central as of the date hereof.

In conjunction with that demand, the undersigned Holder, or Authorized Representative on behalf of all holders for which it is acting as such, has executed and submits this Assignment [If filed by the Authorized Representative, add the following: made pursuant to the terms of Section [] of the Agreement]. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

For value received, the undersigned Holder, or Authorized Representative on behalf of all holders for which it is acting as such, (the "Assignor"), hereby assigns to the National Credit Union Administration ("NCUA") ~~TCCUSF~~ NCUA, without recourse, all of the Assignor's respective rights, title and interest in and to: (a) the promissory note or other instrument evidencing the debt issued under the Agreement (the "Note"); (b) the Agreement pursuant to which the Note was issued; and (c) any other instrument or agreement executed by the Issuer regarding obligations of the Issuer under the Note or the Agreement (collectively, the "Assignment").

The Assignor acknowledges and agrees that this Assignment is subject to the Agreement and to the following:

1. In the event the Assignor receives any payment under or related to the Note or the Agreement from a party other than the ~~TCCUSF~~ NCUA (a "Non-TCCUSF NCUA Payment"):
 - (a) After the date of demand for a guarantee payment on the ~~TCCUSF~~ NCUA pursuant to the TCCULGP, but prior to the date of the ~~TCCUSF~~ NCUA's first guarantee payment under the Agreement, the Assignor shall promptly but in no event later than five (5) Business Days after the receipt of the

Non-NCUA Payment, notify the TCCUSFNCUA of the date and the amount of such Non-TCCUSFNCUA Payment and shall apply such payment as payment made by the Issuer, and not as a guarantee payment made by the TCCUSFNCUA under the TCCULGP, and therefore, the amount of such payment shall be excluded from this Assignment (provided that the Assignor's failure to timely notify the NCUA of the Non-NCUA Payment shall not affect the Assignor's right to retain such payment); and

- (b) After the TCCUSFNCUA's ~~first~~ ^{first} guarantee payment under the Agreement, the Assignor shall forward promptly to the TCCUSFNCUA such Non-TCCUSFNCUA Payment in accordance with the payment instructions provided in writing by the TCCUSFNCUA.
2. Acceptance by the Assignor of payment pursuant to the TCCULGP for its own ~~behalf~~ account, or in the case of ~~an Authorized Representative Assignor~~, on behalf of the holders that have elected to be represented by the Authorized Representative, shall constitute a release by such Holder or holders of any liability of the TCCUSF and the NCUA under the TCCULGP with respect to such payment.

The person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the NCUA and the TCCUSF that he/she/it is duly authorized to do so.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this ____ day of _____, 20__.

Very truly yours,

[Assignor]

By: _____

Printed Name: _____

Title: _____

**AMENDED AND RESTATED AGREEMENT BETWEEN
THE NATIONAL CREDIT UNION ADMINISTRATION
AND
U. S. CENTRAL FEDERAL CREDIT UNION**

**REGARDING THE TEMPORARY GUARANTEE OF CERTAIN UNSECURED DEBT
OBLIGATIONS**

THIS AMENDED AND RESTATED AGREEMENT (the "Agreement") is entered into, effective as of, September 9, 2009, by U.S. Central Federal Credit Union (hereinafter "CORPORATE"), a credit union organized under the laws of the United States of America doing business at 9701 Renner Boulevard, Suite 100, Lenexa, KS and the National Credit Union Administration (the "NCUA"), the Temporary Corporate Credit Union Stabilization Fund ("TCCUSF") and the National Credit Union Share Insurance Fund ("NCUSIF"), pursuant to the Federal Credit Union Act, 12 U.S.C. 1751, et. Seq. (the "Act").

Whereas, the National Credit Union Administration Board (the "BOARD") is the managing body of the NCUA and the Act authorizes the BOARD to take actions consistent with the purpose of the Act, and

Whereas, the Act authorizes the BOARD to perform such acts as it may deem necessary or appropriate to carry out the provisions of the Act, and

Whereas, the BOARD has determined it is in the best interest of the credit union system to provide a temporary guarantee for the qualifying senior unsecured debt obligations of CORPORATE, pursuant to its Temporary Corporate Credit Union Liquidity Guarantee Program (hereinafter "TCCULGP"), to enable CORPORATE to access sources for funding liquidity needs and other purposes contemplated by the Act, and

Whereas, the legal authority for the TCCULGP is located in the Act, including 12 U.S.C. 1766(a), 1766(i)(2), 1783(a), 1788(a)(1), 1790e and 1789(A)(1) and (7), and

Whereas, the NCUA is an independent agency in the executive branch of the United States government, and so the NCUA's guarantees represent obligations of the United States government and are backed by its full faith and credit as indicated by the U.S. Department of Justice in *Debt Obligations of the National Credit Union Administration*, 6 U.S. Op. Off. Legal Counsel 262 (1982),

NOW, THEREAFTER, in consideration of the NCUA's agreement to guarantee qualifying senior unsecured debt obligations issued by CORPORATE, as detailed below, the NCUA, CORPORATE and the BOARD, acting on behalf of the NCUA, the TCCUSF and the NCUSIF, agree as follows:

1. *Guarantee.* The NCUA will and does hereby guarantee 100% of CORPORATE's qualifying senior unsecured debt obligations that are designated as guaranteed in accordance with this Agreement, issued from October 16, 2008 through June 30, 2010 and maturing on or before June 30, 2017 (hereinafter, the "NCUA Guarantee"). The amount of senior unsecured

debt obligations guaranteed under this Agreement shall not exceed \$10,000,000,000, which amount may be increased with the prior written approval of the NCUA.

2. *Qualifying obligations.* The term "qualifying senior unsecured debt obligations" includes the following: federal funds purchased, promissory notes, commercial paper, and unsubordinated unsecured notes, issued from October 16, 2008 through June 30, 2010 and maturing on or before June 30, 2017. A qualifying senior unsecured debt obligation must be noncontingent. It must be evidenced by a written agreement, contain a specified and fixed principal amount to be paid on a date certain, and not be subordinated by its terms to another liability. No document governing the issuance of a qualifying senior unsecured debt obligation that is intended to be subject to and covered by the NCUA Guarantee hereunder shall contain any provision that would result in the automatic acceleration of the debt upon a default by CORPORATE at any time during which the NCUA Guarantee is in effect and during which payments are being made by the NCUA pursuant to the TCCULGP and this Agreement. The term "senior unsecured debt" DOES NOT INCLUDE:

- (a) Share accounts. Shares are insured by the NCUSIF under 12 C.F.R. Part 745.
- (b) Capital accounts, including Member Capital and Paid-in Capital.
- (c) Derivatives.
- (d) Obligations from guarantees or other contingent liabilities.

3. *Use of funds obtained under guarantee.* Subject to subsection 7(c) and subsection 10(a), CORPORATE will NOT identify debt as guaranteed under TCCULGP if:

- (a) The BOARD has terminated the participation of CORPORATE by formal written notification and posted such notification on NCUA's website;
- (b) CORPORATE has exceeded its authorized limit for issued guaranteed debt as specified in paragraph 1, above;
- (c) CORPORATE uses the proceeds to extend credit to a CORPORATE affiliate, an insider of CORPORATE, or an insider of an affiliate without prior NCUA approval of the guarantee;
- (d) CORPORATE uses the proceeds of the guaranteed debt to prepay another, existing debt that is not guaranteed under TCCULGP; or
- (e) The debt does not otherwise meet the requirements of this Agreement.

4. *Determination of guarantee and notice to creditor.* CORPORATE will determine, at time of debt issuance, which of its qualifying senior unsecured debt obligations are guaranteed by the NCUA Guarantee and which are not guaranteed by the NCUA Guarantee. When CORPORATE determines that a particular obligation will be guaranteed by the NCUA Guarantee, it must notify each creditor or purchaser of such debt, contemporaneous with the issuance of such debt, that the credit union intends the obligation to be guaranteed by the NCUA.

The NCUA will not honor a guarantee claim without proof **recorded at or before the time of debt issuance** of CORPORATE's intent to have that particular obligation covered by the NCUA Guarantee (without limiting the types of recordings that may serve as proof of intent, the parties acknowledge that a written confirmation provided by CORPORATE to the creditor or purchaser of such debt expressly stating its intention that such debt be covered by the NCUA Guarantee will be sufficient recording for this purpose). CORPORATE is also encouraged to provide a copy of this Agreement to each creditor or purchaser of debt or its authorized Representative (as defined below). The parties agree that when CORPORATE determines a particular qualifying senior unsecured debt obligation will be covered by the NCUA Guarantee, the holders of that particular debt obligation are intended to be third party beneficiaries of this Agreement.

5. Nature of guarantee and procedure for claims determination.

(a) *Cancellation of guarantee.* Once a qualifying senior unsecured debt obligation has been guaranteed by the NCUA under the terms of this Agreement, the guarantee will continue until the debt has been fully repaid. No party, including the NCUA, the BOARD (or any person appointed by the BOARD), the TCCUSF, the NCUSIF, the CORPORATE, or a creditor holding such debt, may cancel the NCUA Guarantee without the prior written approval of each other such party.

(b) *Payments by the NCUA on guaranteed debt.*

(i) *In general.* The NCUA will provide payment of guaranteed amounts (i) in the case of any payment of principal or interest then due and as to which there is a cure or grace period for such payment, but which CORPORATE has not paid by the end of such cure or grace period, on the Business Day on which any such cure or grace period with respect thereto expires, and (ii) in the case of any payment of principal or interest then due as to which there is no cure or grace period for such payment, but which CORPORATE has not paid on such due date, within five (5) Business Days after such due date (with events referred to in clause (i) or (ii) being hereafter referred to as an "Uncured Event of Default"). If a demand for payment is not made within the time period contemplated in the immediately preceding sentence, but is otherwise timely made, the NCUA will provide payment with respect to such Uncured Event of Default within five (5) Business Days after receipt of such demand. The term "Business Day" means a day other than a Saturday, a Sunday or any other day on which banking institutions in New York, New York are authorized or required by law or executive order to remain closed. Liabilities arising from the NCUA Guarantee will be paid first from the fees assessed to all participating corporate credit unions to participate in the program. To the extent any liability from the NCUA Guarantee exceeds funds from the fees assessed on all corporate credit unions for participation in the TCCULGP that are lawfully available to make payments hereunder, it will then be paid from funds from the TCCUSF that are lawfully available to make payments hereunder and then, if necessary, from funds of the NCUSIF that are lawfully available to make payments hereunder. The

NCUA Guarantee is a general obligation of the NCUA, which is backed by the full faith and credit of the United States government, and which full faith and credit would be available to satisfy any liabilities remaining under the NCUA Guarantee that are not satisfied from the sources of funds referenced in the immediately preceding sentence.

- (ii) *Method of payment.* Upon the occurrence of an Uncured Event of Default, the NCUA will satisfy its guarantee obligation by making the payment that triggered the Uncured Payment Default as well as all future scheduled payments of principal and interest pursuant to the terms of the debt instrument through maturity (without regard to default or penalty provisions). CORPORATE understands and acknowledges that any such payments by the NCUA with respect to a particular issue of senior unsecured debt obligations shall be paid by the NCUA directly to the debtholder or its authorized Representative. In no event shall the NCUA make any such guarantee payment to CORPORATE directly. As used in this Agreement, the term "Representative" means the trustee, administrative agent, fiscal agent, paying agent or other entity or agent designated or otherwise identified as the "Representative" under the governing documents of any qualifying senior unsecured debt obligation of CORPORATE that is subject to the NCUA Guarantee issued under the TCCULGP and pursuant to the terms of this Agreement for purposes of submitting claims or taking other actions under the TCCULGP.
- (iii) *Demand for payment; proof of claim.* Individual debtholders, or their authorized Representatives, may make demand for payment of the guaranteed amount upon the NCUA. To be considered for payment, such demand must be accompanied by a proof of claim, which must include evidence in form and content satisfactory to the NCUA of: the occurrence of a default in the timely (without giving effect to any cure period) payment of principal or interest on a qualifying unsecured debt obligation (a "Payment Default") and the claimant's ownership of the NCUA guaranteed debt obligation. A form TCCULGP Demand and Proof of Claim acceptable to the NCUA is attached hereto as Exhibit A. The demand must also be accompanied by an assignment to the NCUA, in form and content satisfactory to the NCUA, of the debtholder's rights, title, and interest in the NCUA-guaranteed debt and the transfer to the NCUA of the debtholder's claim in any insolvency proceeding of CORPORATE. A form of TCCULGP Assignment acceptable to the NCUA is attached hereto as Exhibit B. This assignment must include the right of the NCUA to receive any and all distributions on the debt from the proceeds of CORPORATE's liquidation estate. If the demand is submitted by an authorized Representative of all debtholders of a specific senior unsecured debt issuance that have appointed the Representative as such, the proof of claim also must include evidence in form and content satisfactory to the NCUA of: the Representative's financial and organizational capacity to act as Representative; the Representative's

exclusive authority to act on behalf of each and every debtholder appointing such Representative as such, when acting as such, as established by the terms of the applicable governing document; and the authority to make the required assignment of each such debtholder's right, title, and interest in the NCUA-guaranteed debt to the NCUA and to effect the transfer to the NCUA of each such debtholder's claim in any insolvency proceeding of CORPORATE (it being acknowledged that the certifications set forth in the form TCCULG Demand and Proof of Claim attached hereto as Exhibit A are acceptable evidence in form and content to the NCUA for this purpose). If any holder of the NCUA-guaranteed debt has received any distribution on that NCUA-guaranteed debt from the estate prior to the NCUA's payment under the NCUA Guarantee, the guaranteed amount payable by the NCUA will be reduced by the amount the holder has received in the distribution. All demands for payment hereunder must be made within 90 days of the occurrence of the Payment Default upon which the demand is based. Upon receipt of a conforming proof of claim in the form described above, if timely filed, the NCUA will make payments of: (i) all amounts due with respect to the Uncured Event of Default, in accordance with the time schedule set forth in subsection 5(b)(i) above, and (ii) all payments of principal of and interest on the qualifying senior unsecured debt obligations that are due after such Uncured Event of Default, in accordance with the terms of such obligations.

- (A) Any demand under this subsection must be made in writing and directed to the Executive Director, National Credit Union Administration, Alexandria, Virginia.
- (B) Failure of the holder of the NCUA-guaranteed debt, or such holder's authorized Representative, to make demand for payment within ninety (90) days of the occurrence of a Payment Default will deprive the holder of the NCUA-guaranteed debt of all further rights and remedies with respect to its claim under the NCUA Guarantee with respect to such debt of CORPORATE.
- (C) *Subrogation.* Upon any NCUA payment made under this section 5, the NCUA will be subrogated to the rights of any debtholder against CORPORATE, including in respect of any insolvency proceeding of CORPORATE, to the extent of the payments made by the NCUA pursuant to the NCUA Guarantee. As a government entity, the NCUA will be entitled to the payout priority established in 12 C.F.R. §709.5(b)(4).
- (d) *Release and satisfaction.* Timely payment by the NCUA to a debtholder or such debtholder's Representative under subsection 5(b)(ii) above will constitute, to the extent of payments made, satisfaction of all NCUA obligations under the TCCULGP with respect to those payments to such debtholder or such debtholder's Representative. Acceptance of any such timely payments will

constitute a release of any liability of the NCUA under the TCCULGP with respect to those payments. CORPORATE agrees and acknowledges that it will be indebted to the NCUA for any payments made under these provisions (including amounts paid to another party in return for its assumption of a guaranteed debt issuance) and CORPORATE will honor immediately a demand by the NCUA for reimbursement therefore. Beginning on the date of such demand for reimbursement, CORPORATE shall pay interest to the NCUA on any unpaid principal of or interest on such indebtedness, at an interest rate equal to 1% above the non-default interest rate payable on the qualifying senior unsecured debt obligation with respect to which the guarantee payments were made, as calculated in accordance with the documents governing such obligation. CORPORATE shall reimburse NCUA for all reasonable, out-of-pocket expenses, disbursements and advances incurred or made by it, including costs of collection or other enforcement of CORPORATE's obligations hereunder. Such expenses include the reasonable compensation and expenses, disbursements and advances of NCUA's agents, counsel, accountants and experts. Beginning on the date of any payment on the guarantee, CORPORATE hereby waives any defenses it might otherwise have to its payment obligations under the senior unsecured debt obligation, continuing until CORPORATE has fully reimbursed NCUA for any and all amounts due.

- (e) *Final determination; review of final determination.* Any determination made by the NCUA under Section 5(b)(iii) as to the sufficiency of a demand for payment, proof of claim or assignment agreement will be a final administrative determination subject only to judicial review. The holder of NCUA-guaranteed debt (or such debtholder's Representative) will have the right to seek judicial review of the NCUA's final determination in the district court of the United States where CORPORATE's principal place of business is located or in the United States District Court for the Eastern District of Virginia. Failure of the holder of the NCUA-guaranteed debt to either seek such judicial review within sixty (60) days of the date of the rendering of the final determination or to cure the relevant deficiency by submitting a revised demand for payment, proof of claim or assignment agreement, as applicable, that complies with the requirements of Section 5(b)(iii) within the time period specified therein will deprive the holder of the NCUA-guaranteed debt of all further rights and remedies with respect to its claim under the NCUA Guarantee with respect to such debt of CORPORATE.

6. *Participation.* CORPORATE will pay the guarantee assessment as specified in paragraph 7, below, for every debt obligation guaranteed under the TCCULGP. CORPORATE's election to participate covers qualifying unsecured debt obligations issued from October 16, 2008 up to and including June 30, 2010 if:

- (a) The debt matures on or before June 30, 2017; and
- (b) The CORPORATE identifies the debt as covered by the NCUA Guarantee.

7. *Assessments.*

- (a) *Assessment calculation and remittance.* Beginning on October 16, 2008, CORPORATE will pay the NCUA an assessment on the outstanding principal of each guaranteed obligation. CORPORATE will provide a listing of guaranteed debt issued by CORPORATE during the preceding month to the NCUA by the third business day of each month. The NCUA will provide an invoice to CORPORATE by the tenth business day of each month. For months ending before July 1, 2009, the assessment fee will be calculated by multiplying the dollar amount of the guaranteed debt obligation by 75 basis points, multiplied by the number of days the issuance is outstanding in the applicable month, and divided by 365. For months ending after July 1, 2009, the fee will be calculated by multiplying the dollar amount of the guaranteed debt obligation by the number of basis points specified in paragraph 7(b) below, multiplied by the number of days the issuance is outstanding in the applicable month, and divided by 365. CORPORATE will wire fees to the NCUA by the fifteenth business day of the month, pursuant to invoice instructions.
- (b) *Assessment of fees after July 1, 2009.* The fees assessed by the NCUA after July 1, 2009 vary based on the original maturity of the debt, as follows:
- a. Maturity from 0 days to 2 years, 10 bps, per annum;
 - b. Maturity over 2 years to 3 years, 15 bps per annum;
 - c. Maturity over 3 years to 4 years, 20 bps per annum;
 - d. Maturity over 4 years to 5 years, 25 bps per annum;
 - e. Maturity over 5 years to 6 years, 30 bps per annum;
 - f. Maturity over 6 years; 35 bps per annum.
- (c) *Increased assessment for debt exceeding the guarantee limit or misusing debt proceeds.* If CORPORATE issues qualifying debt represented as being guaranteed by the NCUA that exceeds CORPORATE's authorized guaranteed debt limit as set forth in paragraph 1, above, or CORPORATE uses the proceeds of any guaranteed debt to prepay another existing debt obligation that is not NCUA guaranteed, or the debt does not otherwise meet the requirements of this Agreement, the NCUA will perform its obligations under the guarantee, provided, however, that upon the occurrence of either event CORPORATE's assessment rate for all outstanding guaranteed debt will increase to twice the rate set forth in subparagraph (b) above for purposes of the calculation in subparagraph (a) above and, in addition, CORPORATE may be subject to enforcement action by the BOARD, including civil money penalties under the Act.

8. *Reporting to the NCUA.*

- (a) CORPORATE will provide a spreadsheet to the NCUA by the third business day of each month listing all guarantees in effect at any time during the prior month. The spreadsheet will disclose the name of the creditor, the type of transaction, the dollar amount of the transaction, the date the debt was issued, and the maturity date of the debt. Additionally, CORPORATE will copy the NCUA on all written confirmations provided to creditors indicating that a specific transaction is guaranteed under the TCCULGP. Transactions that are confirmed via telephone must also be followed up with a written confirmation on which the NCUA is copied. All reporting documentation to the NCUA will be submitted to the Office of Corporate Credit Unions via electronic submission to OCCUmail@ncua.gov. All documents related to the TCCULGP must be made available to CORPORATE's examiner upon request.
- (b) CORPORATE covenants and agrees that it shall notify the NCUA within one business day after any default by CORPORATE in the payment of any principal or interest when due, without giving effect to any cure period, with respect to any indebtedness of CORPORATE (including debt that is not subject to the NCUA Guarantee under the TCCULGP), whether such debt is existing as of the date of this Agreement or is issued subsequent to the date hereof, if such default would result, or would reasonably be expected to result, in an event of default under any qualifying senior unsecured debt obligation of CORPORATE that is subject to and covered by the NCUA Guarantee under the TCCULGP and this Agreement.

9. *Breaches; False or Misleading Statements.* CORPORATE acknowledges and agrees that (a) if it is in breach of any provision of this Agreement, or (b) if it makes any false or misleading statement or representation in connection with the CORPORATE's participation in the TCCULGP, or makes any statement or representation in bad faith with the intent to influence the actions of the NCUA (each of the foregoing, a "Corporate Breach"), the NCUA may terminate CORPORATE's participation in the TCCULGP pursuant to Section 10(a). Any such termination of CORPORATE's participation in the TCCULGP would solely have prospective effect, and neither such termination nor the occurrence of any Corporate Breach would in any event affect the NCUA Guarantee with respect to the qualifying senior unsecured debt obligations of CORPORATE that are issued and outstanding prior to the termination of CORPORATE's participation in the TCCULGP or the occurrence of such Corporate Breach, as applicable.

10. *Termination.*

- (a) BOARD may terminate CORPORATE's participation in the TCCULGP at any time and at BOARD's discretion. Termination will be by written notice issued to CORPORATE and published on NCUA's website. Termination of CORPORATE's participation in the TCCULGP will solely have prospective effect. The NCUA Guarantee will continue, until the debt is fully repaid, on any of CORPORATE's debt guaranteed by the NCUA before the NCUA publishes the notice of termination on NCUA's website.

(b) CORPORATE may not terminate its participation in the TCCULGP.

11. *Effect on earlier agreement.* This Agreement controls and is intended to supersede and replace in all respects the earlier TCCULGP Agreement dated June 30, 2009 signed by CORPORATE and BOARD. Guarantees by NCUA of debt of CORPORATE previously issued shall continue in full force and effect.

12. *Amendment and Modification.* This Agreement may be amended, modified and supplemented only by a written instrument signed by the parties hereto expressly stating that such instrument is intended to amend, modify or supplement this Agreement; provided, that no such amendment, modification or supplement shall be valid to the extent it adversely affects the rights or interests of any third party beneficiary hereof unless such third party beneficiary has granted its prior written consent thereto

13. *Venue.* Each of the parties hereto irrevocably and unconditionally agrees that any legal action arising under or in connection with this Agreement is to be instituted in the United States District Court for the Eastern District of Virginia or in any United States District Court in the jurisdiction where CORPORATE maintains its principal place of business.

14. *Severability.* Any term or provision of this Agreement that is held by a court of competent jurisdiction to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

15. *Governing law.* Federal law of the United States shall control this Agreement. To the extent that federal law does not supply a rule of decision, this Agreement shall be governed by, construed and enforced in accordance with the laws of the state of Virginia.

16. *Assignment.* Neither this Agreement nor any rights, interests or obligations hereunder shall be assigned by CORPORATE whether by operation of law or otherwise, without the prior written consent of NCUA, and any purported assignment without such consent shall be void. Subject to the preceding sentence, this agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Agreed:

NATIONAL CREDIT UNION ADMINISTRATION

BY: _____

Date: _____

TITLE: Executive Director
Pursuant to delegated authority

Acknowledged and agreed to by:

NATIONAL CREDIT UNION ADMINISTRATION BOARD,
on behalf of the BOARD, the NCUA, the TCCUSF and the NCUSIF

BY: _____

Date: _____

TITLE: Executive Director
Pursuant to delegated authority

Agreed:

U. S. CENTRAL FEDERAL CREDIT UNION

BY: _____

Date: _____

TITLE: James L. Nance
President & CEO

BY: _____

Date: _____

TITLE: Sub-Agent for Conservator

EXHIBIT A

**Form of
TCCULGP DEMAND AND PROOF OF CLAIM**

_____[Date]

Executive Director
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Attention: _____

The undersigned is the holder ("Holder") or a duly authorized representative ("Representative") of a holder or holders of outstanding qualifying senior unsecured debt obligations under the _____ [insert title of governing document (hereinafter referred to as the "Governing Document") and CUSIP Number, if any] dated _____ [insert month, day and year] by and between U.S. Central Federal Credit Union ("U.S. Central"), as the Issuer, and the undersigned or the undersigned's agent (as amended from time to time, the "Agreement"), pursuant to which the qualifying senior unsecured debt obligations were issued by U.S. Central, and the debt obligations issued under the Agreement are guaranteed by the National Credit Union Administration ("NCUA") under the Temporary Corporate Credit Union Liquidity Guarantee Program ("TCCULGP"). The undersigned Holder, or Representative on behalf of all holders that have elected to be represented by the Representative, hereby demands payment of the following amounts that were due and payable to such holders on [insert month, day and year] (without giving effect to any cure period) and have not been paid by U.S. Central as of the date hereof (such failure to pay, a "Payment Default"):

Principal: _____

Interest: _____

Together with payment, when due, of all other principal and interest payments payable by CORPORATE pursuant to the Agreement.

Payment of the foregoing amounts should be made to the undersigned by wire transfer to the following account:

Financial Institution Name: _____

ABA Routing Number: _____

Account Number: _____

Special Instructions: _____

The undersigned hereby makes the following certifications, which certifications are true and correct as of the date hereof:

1. The undersigned is either:
☐ the Holder; or
☐ the authorized Representative of all debtholders under the Agreement that have appointed the Representative as such.
2. If the undersigned is the Holder, the undersigned further certifies that:
 - (a) it hereby does make an assignment of each right, title and interest in the NCUA-guaranteed debt to the NCUA and to effect the transfer to the NCUA of all of Holder's claims in any insolvency proceeding of U.S. Central (pursuant to and subject to the terms of the assignment agreement included herewith). Included herewith is the executed and completed form of assignment of the Holder's interest in the NCUA-guaranteed debt and includes the right of the NCUA to receive any and all such distributions on the debt from the proceeds of U.S. Central's liquidation estate (except as expressly provided therein); and
 - (b) The undersigned hereby certifies that this demand is being made within 90 days of the occurrence of the Payment Default upon which the demand is based. The failure of the Holder to make demand for payment will deprive the Holder of all further rights and remedies with respect to guarantee claims relating to such Payment Default.
3. If the undersigned is the authorized Representative of all debt-holders under the Agreement that have appointed the Representative as such, the undersigned further certifies that:
 - (a) it has the financial capacity to act as Representative since the undersigned has sufficient capital and surplus to act as Representative under the eligibility provisions of the Agreement (Section ____), as evidenced by a current report of condition of the undersigned Representative. Such report of condition may take the form of a report of examination and is attached as Exhibit _____. If the governing documents do not contain a financial eligibility requirement, the undersigned or an affiliate thereof must be "well capitalized," as that term is defined in 12 U.S.C. §1831o(b)(1) if the Representative is a bank, or 12 U.S.C. §1790d or applicable NCUA regulations if the Representative is a credit union;
 - (b) it has the organizational capacity to act as Representative since the undersigned is a [i.e. New York banking corporation] with authority to commence business and to exercise corporate trust powers, as evidenced by the Organization Certificate of the undersigned, a copy of which is attached as Exhibit ____;
 - (c) it has the exclusive authority to act on behalf of each and every debt-holder under the Agreement that has appointed it as the authorized representative and has a fiduciary responsibility to act on behalf of each such debt-holder to the extent contemplated by the Governing Document

and applicable law. The undersigned is expressly designated as the duly authorized representative of such holders for purposes of making claims and taking other permitted or required actions under the TCCULGP, as evidenced in Section __ of the Agreement on page __. The Agreement is attached hereto in its entirety as Exhibit __.

- (d) it is expressly authorized to, and hereby does, make an assignment of each right, title and interest in the NCUA-guaranteed debt to the NCUA and to effect the transfer to the NCUA of each holder's claims in any insolvency proceeding of U.S. Central (pursuant to and subject to the terms of the assignment agreement included herewith). Evidence of such authorization is provided in Section ____ of the Agreement on page _____. Also included herewith is the executed and completed form of assignment of each holder's interest in the NCUA-guaranteed debt and includes the right of the NCUA to receive any and all such distributions on the debt from the proceeds of U.S. Central's liquidation estate (except as provided therein).
- (e) this demand is being made within 90 days of the occurrence of the Payment Default upon which the demand is based. The failure of the authorized Representative to make demand for payment within such 90 day period will deprive the debt-holder or debt-holders of all further rights and remedies with respect to guarantee claims relating to such Payment Default.

HOLDER

By: _____

Printed Name: _____

Title: _____

(Tax Identification No.) _____

(Mailing Address) _____

(Telephone Number) _____

(Fax Number) _____

OR

REPRESENTATIVE

By: _____

Printed Name: _____

Title: _____

(Tax Identification No.)

(Mailing Address)

(Telephone Number)

(Fax Number)

DRAFT

EXHIBIT B

Form of TCCULGP ASSIGNMENT

The undersigned is the holder ("Holder") or a duly authorized representative of a holder or holders of outstanding qualifying senior unsecured debt obligations under the [insert title of governing document and CUSIP Number, if any] dated [insert month, day and year] by and between U.S. Central Federal Credit Union ("U.S. Central" or "Issuer"), as the Issuer, and the undersigned or the undersigned's agent (as amended from time to time, the "Agreement"), pursuant to which such qualifying senior unsecured debt obligations were issued by U.S. Central, and the debt obligations issued under the Agreement are guaranteed by the National Credit Union Administration ("NCUA") under the Temporary Credit Union Liquidity Guarantee Program ("TCCULGP"). The undersigned Holder, or representative on behalf of all holders that have elected to be represented by the representative (the "Authorized Representative"), has demanded payment of amounts now due and payable to such holder(s) (without giving effect to any cure period), which have not been paid by U.S. Central as of the date hereof.

In conjunction with that demand, the undersigned Holder, or Authorized Representative on behalf of all holders for which it is acting as such, has executed and submits this Assignment [If filed by the Authorized Representative, add the following: made pursuant to the terms of Section [] of the Agreement]. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in the Agreement.

For value received, the undersigned Holder, or Authorized Representative on behalf of all holders for which it is acting as such, (the "Assignor"), hereby assigns to the NCUA, without recourse, all of the Assignor's respective rights, title and interest in and to: (a) the promissory note or other instrument evidencing the debt issued under the Agreement (the "Note"); (b) the Agreement pursuant to which the Note was issued; and (c) any other instrument or agreement executed by the Issuer regarding obligations of the Issuer under the Note or the Agreement (collectively, the "Assignment").

The Assignor acknowledges and agrees that this Assignment is subject to the Agreement and to the following:

1. In the event the Assignor receives any payment under or related to the Note or the Agreement from a party other than the NCUA (a "Non-NCUA Payment"):
 - (a) After the date of demand for a guarantee payment on the NCUA pursuant to the TCCULGP, but prior to the date of the NCUA's first guarantee payment under the Agreement, the Assignor shall promptly but in no event later than five (5) Business Days after the receipt of the Non-NCUA Payment, notify the NCUA of the date and the amount of such Non-NCUA Payment and shall apply such payment as payment made by the Issuer, and not as a guarantee payment made by the NCUA under the TCCULGP, and therefore, the amount of such payment shall be excluded from this Assignment (provided that the Assignor's failure to timely notify

the NCUA of the Non-NCUA Payment shall not affect the Assignor's right to retain such payment); and

(b) After the NCUA's first guarantee payment under the Agreement, the Assignor shall forward promptly to the NCUA such Non-NCUA Payment in accordance with the payment instructions provided in writing by the NCUA.

2. Acceptance by the Assignor of payment pursuant to the TCCULGP for its own account, or in the case of an Authorized Representative, on behalf of the holders that have elected to be represented by the Authorized Representative, shall constitute a release by such Holder or holders of any liability of the NCUA under the TCCULGP with respect to such payment.

The person who is executing this Assignment on behalf of the Assignor hereby represents and warrants to the NCUA that he/she/it is duly authorized to do so.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed and delivered this ____ day of _____, 20__.

Very truly yours,

[Assignor]

By: _____

Printed Name: _____

Title: _____